

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

07 CV 1367

X Case No.

DERRELL SMITH, on behalf of himself individually and  
all others similarly situated

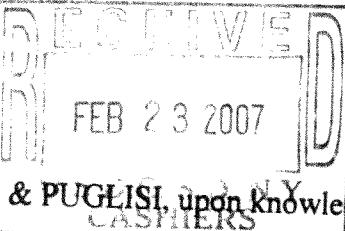
JUDGE LYNCH

Plaintiff,

-against-

ACA RECEIVABLES COMPANY LLC  
("AMERICAN AGENCIES")

Defendant.



Plaintiff, by and through his attorneys, FAGENSON & PUGLISI, upon knowledge  
as to himself and his own acts, and as to all other matters upon information and belief, brings this  
complaint against the above-named defendant and in support thereof alleges the following:

#### INTRODUCTION

1. This is an action for damages brought by an individual consumer and on behalf of a class for defendant's violations of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692, *et seq* which prohibits debt collectors from engaging in abusive, deceptive and unfair acts and practices.

#### PARTIES

2. Plaintiff is a natural person residing in the County of the Bronx, New York and is a consumer as defined by the FDCPA.

3. Upon information and belief, defendant is a debt collector, as defined pursuant to 15 U.S.C. § 1692a (6), with its principal place of business in San Diego, California.

#### JURISDICTION AND VENUE

4. This Court has jurisdiction and venue pursuant to 15 U.S.C. § 1692k(d) (FDCPA) and 28 U.S.C. § 1331.

#### AS AND FOR A FIRST CAUSE OF ACTION

5. Plaintiff re-alleges paragraphs 1 to 4 as if fully re-stated herein.

6. That sometime in January 2007 the defendant sent a letter to the plaintiff dated January 8, 2007 (copy of letter is attached hereto).

7. That said letter identifies the underlying creditor as PB PACBELL, an entity unknown to the plaintiff and with which the plaintiff has had no dealings or relationship in the past. Plaintiff is unaware of ever owing a personal, family or household debt to PB PACBELL.

8. That said letter does not clearly identify the original creditor and, alternatively, identifies an original creditor who is not a creditor of the plaintiff and constitutes a deceptive practice, in violation of the FDCPA § 1692e.

#### AS AND FOR A SECOND CAUSE OF ACTION

9. Plaintiff re-alleges paragraphs 1-8 as if fully re-stated herein.

10. That said letter states in relevant part: "Upon our receipt of the balance due shown above, your account will be paid off and we will notify the credit bureaus, as applicable, of your new account status."

11. That said language contained a false threat and constitutes a deceptive practice, in so far as it purports to imply that plaintiff's credit rating is being affected by this creditor who is unknown to plaintiff, in violation of § 1692e.

AS AND FOR A THIRD CAUSE OF ACTION

12. Plaintiff re-alleges paragraphs 1-11 as if fully re-stated herein.
13. That said letter does not contain a validation rights notice advising the plaintiff of his right to dispute the validity of the underlying debt sought to be collected, in violation of the FDCPA, § 1692g.
14. That defendant further failed to send said validation notice to the plaintiff within five days of sending the said letter or at any time thereafter, in violation of the FDCPA, § 1692g.

AS AND FOR A FOURTH CAUSE OF ACTION

15. Plaintiff re-alleges paragraphs 1-14 as if fully re-stated herein.
16. That by reason of the defendant's aforesaid violations of the FDCPA the plaintiff suffered stress, anxiety and emotional distress.

CLASS ALLEGATIONS

17. That plaintiff re-alleges paragraphs 1-16 as if fully re-stated herein.
18. That this action is brought on behalf of plaintiff and the members of a class. The class consists of all persons whom defendant's records reflect resided in the State of New York and who were sent a collection letter (a) bearing the defendant's letterhead in substantially the same form as the letter sent to the plaintiff on or about January 9, 2007; (b) the collection letter was sent to a consumer seeking payment of a consumer debt that was sold to a third party portfolio buying company; (c) the collection letter was not returned by the postal service as undelivered; and (d) the letter contained violations of 15 U.S.C. §§ 1692e and 1692g.

19. That pursuant to Federal Rule of Civil Procedure 23, a class action is appropriate and preferable in this case because:

- (A) Based on the fact that the collection letters that are the gravamen of this litigation are mass-mailed form letters, the class is so numerous that joinder of all members is impracticable. Upon information and belief, thousands of persons have received debt collection notices from the defendant which violate various provisions of the FDCPA.
- (B) There are questions of law and fact common to the class and these questions predominate over any questions affecting only individual class members. The principal question presented by this claim is whether defendant violated the FDCPA by engaging in false threats and deceptive collection practices, and by failing to send a validation of debt notice to the class members.
- (C) The only individual issue is the identification of the consumers who received the letters (the class members), a matter capable of ministerial determination from the records of defendant.
- (D) The claims of the plaintiff are typical of those of the class members. All are based on the same facts and legal theories.
- (E) The plaintiff will fairly and adequately represent the class members' interests. The plaintiff has retained experienced counsel. The plaintiff's interests are consistent with those of the members of the class.

20. That a class action is superior for the fair and efficient adjudication of the class members' claims. Congress specifically envisions class actions as a

principal means of enforcing the FDCPA in 15 U.S.C. § 1692k. The members of the class are generally unsophisticated individuals, whose rights will not be vindicated in the absence of a class action. Prosecution of separate actions by individual members of the class would create the risk of inconsistent or varying adjudications resulting in the establishment of inconsistent or varying standards for the parties and would not be in the interest of judicial economy.

21. That if the facts are discovered to be appropriate, the plaintiff will seek to certify a class action pursuant to rule 23(b)(3) of the Federal Rules of Civil Procedure.
22. That collection letters, such as those sent by the defendant, are to be evaluated by the objective standard of the hypothetical "least sophisticated consumer".
23. That as a result of the above violations, defendant is liable to the plaintiff and the members of the class for statutory damages in an amount to be determined at the time of trial, plus costs and attorney's fees.
24. That defendant violated the FDCPA. Defendant's violations include, but are not limited to:
  - (a) engaging in false and deceptive debt collection practices in violation of the FDCPA, §1692e;
  - (b) failing to send a validation rights notice in violation of the FDCPA, §1692g; and
  - (c) causing plaintiff stress, anxiety and emotional distress by reason of the

foregoing violations.

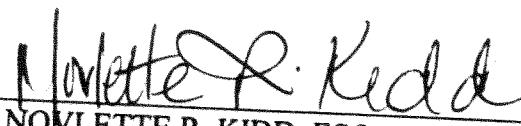
WHEREFORE, plaintiff respectfully prays that judgment be entered against the defendant as follows:

- (a) statutory damages pursuant to 15 U.S.C. § 1692k in an amount to be determined at the time of trial;
- (b) awarding class members the maximum statutory damages pursuant to 15 U.S.C. § 1692k;
- (c) reasonable attorney's fees, costs and disbursements pursuant to 15 U.S.C. § 1692k ; and
- (d) for such other and further relief as may be just and proper.

**DEMAND FOR TRIAL BY JURY**

Plaintiff requests trial by jury on all issues so triable.

Dated: New York, New York  
February 22, 2007

  
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**American Agencies**

800-628-5773

1660 Hotel Circle Dr. North Ste. 215  
San Diego, CA 92108

RETURN SERVICE REQUESTED

January 8, 2007

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DARRELL SMITH - LA 7553407  
2773 UNIVERSITY AVE APT 1  
BRONX NY 10468-2603

RE: PB PACBELL  
Account Number: LA 7553407  
Principal Owed: \$236.19  
Interest Owed: \$196.03  
Pay This Amount: **\$432.22**

**We Want to Hear From You!**

We would really like to finalize this outstanding account with you. Would you please give us a call to discuss your intentions? We would be happy to answer any questions you have, discuss payment options with you, or assist in resolving any concerns. Please telephone us at your earliest convenience at 800-628-5773.

Upon our receipt of the balance due shown above, your account will be paid off and we will notify the credit bureaus, as applicable, of your new account status.

Enjoy the satisfaction of resolving this matter once and for all - Remit payment or call us today!

If you would rather remit payment in full in order to close this account, we have enclosed a self-addressed envelope or if you wish to make a secure payment online using your checking account information or credit card you may log on to ITS Pay My Bill at [www.paymybill.com](http://www.paymybill.com) and input your User ID 1267663 and Password which is LA 7553407. Also, flexible payment methods are available through Western Union, allowing remittance by cash or credit card, via telephone, Internet or in person at one of their many payment centers. Please contact our office for payment instructions if you wish to pay by Western Union.

This has been sent to you by a debt collector or collection agency. This is an attempt to collect a debt. Any information obtained will be used for that purpose.

**NOTICE: PLEASE SEE REVERSE SIDE FOR ADDITIONAL IMPORTANT INFORMATION.**

Our telephone calls are randomly monitored and/or recorded for quality assurance and training purposes.

AAG6X-0108A300092-JGGA-3 121

**Return this portion with your payment**

Detach this payment coupon and return it with your payment in the envelope provided.  
Make check or money order payable to: **American Agencies**. Do not send cash.  
Please write your Account Number shown below on your payment.

Account Number: LA 7553407

From: \_\_\_\_\_

Pay This Amount: **\$432.22**

Phone: \_\_\_\_\_

American Agencies  
P.O. Box 2829  
Torrance, CA 90509-2829

Address: \_\_\_\_\_

Check here if new address or phone  
Marque aquí si su dirección o teléfono cambió

**PRIVACY NOTICE**

This privacy notice is on behalf of ACA Receivables Company LLC ("American Agencies"), and its affiliates, pursuant to the Gramm-Leach-Bliley Act, 15 U.S.C. § 6801 et seq. American Agencies is committed to protecting your personal information. Please take a moment and read this privacy notice for important information about your rights.

**This Privacy Notice Covers**

- Customer information, which means personally identifiable information based on your current or former relationship with us.

**Categories of Information We May Collect**

- Your account file and information at the time it is acquired
- Your transactions and experience with us or our affiliates
- Information from consumer reporting agencies and other third party providers such as public records and databases containing public information.

**Categories of Information We May Disclose**

- We do not disclose any nonpublic personal information about our customers or former customers to anyone, except (1) to effect, administer or enforce a transaction you request or authorize, (2) to service or process a financial product or service you request or authorize, or (3) as permitted by law.

**Confidentiality and Security of Your Information**

- We restrict access to nonpublic personal information about you to those employees who need to know such information and certain third party service providers who provide support services to us. To protect your personal information, we maintain physical safeguards such as like restricted access, electronic safeguards such as encryption and password protection, and procedural safeguards such as authentication procedures. Sometimes we use other companies to provide services for us (such as services relating to our efforts to effect, administer or enforce any transaction between you and us). We choose those companies very carefully. They must keep the information we share with them safe and secure and we do not allow them to use or share the information for any purpose other than the job they are hired to do.

**We are required under state and/or federal law to notify consumers of the following rights and/or information. This list does not include a complete list of rights consumers have under state and federal laws.**

**TO RESIDENTS IN:**

**New York City:**

New York City Department of Consumer Affairs License #1135182